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16 United States of America

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 SAN FRANCISCO DIVISION

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21 UNITED STATES OF AMERICA,) CR 08-0160 SI
22 Plaintiff,) UNITED STATES' STATUS
23 v.) STATEMENT
24 JOHN JOSEPH COTA,)
25 Defendant.)
26 _____)

27 The parties will be making their initial appearance before this Court on Friday, May 9,
28 2008, at 11:00 am. Aspects of this case have been litigated since December 2007. The
United States files this statement to provide the court with a brief background on the case

1 and the pending issues.

2 **I. Introduction**

3 Defendant John Cota is a San Francisco Bar Pilot. While sailing through the San
4 Francisco Bay, large ships are required to have a licensed pilot. The majority of these
5 pilots are San Francisco Bar Pilot. To maintain their pilot's license, pilots are required to
6 take an annual physical.

7 Captain Cota was the pilot on the *M/V Cosco Busan* on November 7, 2007, when the
8 ship hit a tower of the Bay Bridge causing over 50,000 gallons of bunker fuel to spill into
9 the Bay, which led to the death of approximately 2,000 migratory birds.

10 The indictment alleges that Captain Cota failed to disclose all of his current
11 medications on his annual physical form in 2006 and 2007, and when he piloted the
12 *Cosco Busan* on November 7, 2007, he was negligent. Specifically:

13 **Counts 1-2** charge Captain Cota with making false statements in violation of 18
14 U.S.C. § 1001;

15 **Count 3** charges Captain Cota with negligently discharging oil into the navigable
16 waters of the United States in violation of the Clean Water Act, as amended by the Oil
17 Pollution Act of 1990, 33 U.S.C. §§ 1319(c)(1), 1321(b)(3) (a misdemeanor offense);
18 and

19 **Count 4** charges Captain Cota with taking, without a permit, protected migratory
20 birds, in violation of the Migratory Bird Treaty Act, 16 U.S.C. §§ 703, 707(a) (a
21 misdemeanor offense).

22 **II. Procedural History**

23 The crew of the *Cosco Busan* are Chinese nationals. The ship's master and five crew
24 members have been detained in San Francisco since the incident and formally held as in
25 the Bay Area as material witnesses since January 3, 2008. *See In re Material Witness*
26 *Warrants*, CR 07-09552 MISC VRW (JCS). The material witness matter was assigned
27 initially to Magistrate Judge Vadas.

28 On March 17, 2008, the United States filed an information charging Captain Cota with

1 the Clean Water Act/Oil Pollution Act and Migratory Bird Treaty Act violation. That
2 case was assigned to Magistrate Judge Spero who took over the material witness matter.

3 On April 22, 2008, a superseding indictment was returned charging Captain Cota
4 with the current charges.

5 On April 30, 2008, Magistrate Judge Larson conducted a settlement conference in the
6 case. A second settlement conference is scheduled for May 21, 2008.

7 Forty-four days remain on the speedy trial clock. Currently by stipulation time is
8 excluded until June 1, 2008.

9 **III. Material Witnesses and Rule 15 Depositions**

10 The Master of the *Cosco Busan* and five crew members are being housed in San
11 Francisco. Their food, lodging and salary are being paid by Fleet Management, their
12 employer and the operator of the *Cosco Busan* pursuant to a surety agreement negotiated
13 with the Coast Guard that expires on May 31, 2008. The United States is working to find
14 a means to provide the material witnesses with food and lodging beyond May 31, 2008.

15 On April 1, 2008, five of the six material witnesses moved for depositions pursuant to
16 Rule 15 of the Federal Rules of Criminal Procedure and for their release. Neither the
17 government nor the defendant opposed the motion with respect to the request for Rule 15
18 depositions. On May 1, 2008, at a hearing on that motion, Judge Joseph C. Spero ordered
19 that the Rule 15 depositions should proceed in the last week of May and the first week of
20 June with regard to three of the material witnesses that were not on the bridge on the day
21 of the casualty. These three witnesses are Chief Officer Kong Xiang Hu, Second Officer
22 Shun Biao Zhao, and Bosun Liang Xiang Zheng. All three witnesses are represented by
23 Jonathan Howden.

24 The parties and the Court have yet to discuss the method for taking the depositions.
25 The United States proposes that the Court establish a briefing schedule so that this matters
26 can be expeditiously addressed.

27 The scheduling of the remaining three Rule 15 depositions is contingent upon the
28 defense having access to and an opportunity to review adequate discovery.

IV. Discovery

The discovery in this case is voluminous and involves specialized data specific to mariner activities. The United States has provided extensive discovery to the defense that is already in the tens of thousands of pages. This discovery includes all statements and reports concerning the material witnesses. The United States is also making continuous efforts to work with defense counsel to make the discovery accessible and intelligible.

On May 7, 2008, pursuant to Judge Spero's order, the parties met and conferred on discovery. On that same day the United States filed a motion asking the Court to allow the discovery of the audio tapes from the ship's Voyage Data Recorder, similar to the "black box" on an aircraft. See *United States' Motion And [Proposed] Order To Allow Discovery Of The M/V Cosco Busan's November 7, 2007, Bridge Recording*.

Respectfully submitted,

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